IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **FINAL JURY INSTRUCTIONS**

Ladies and Gentlemen of the Jury:

The instructions I gave you at the beginning of the trial and during the trial remain in effect. I will now give you some additional instructions.

You must, of course, continue to follow the instructions I gave you earlier, as well as those I give you now. You must not single out some instructions and ignore others, because all are important. This is true even though some of those I gave you at the beginning of and during trial are not repeated here.

The instructions I am about to give you now are in writing and will be available to you in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all instructions, whenever given and whether in writing or not, must be followed.

INSTRUCTION NUMBER _____

In considering these instructions, attach no importance or significance whatsoever to the order in which they are given.

INSTRUCTION NUMBER _____

Neither in these instructions nor in any ruling, action, or remark that I have made during this trial have I intended to give any opinion or suggestion as to what the facts are or what your verdict should be.

INSTRUCTION NUMBER _____

It is your duty to find from the evidence what the facts are. You will then apply the law, as I give it to you, to those facts. You must follow my instructions on the law, even if you thought the law was different or should be different.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

INSTRUCTION NUMBER _____

I have mentioned the word "evidence." The "evidence" in this case consists of the following: the testimony of the witnesses; the documents and other things received as exhibits; and stipulations, that is, agreements between the parties that certain facts are as they have stated.

You may use reason and common sense to draw deductions or conclusions from facts which have been established by the evidence in the case.

Certain things are not evidence. I shall list those things again for you now:

1. Statements, arguments, questions, and comments by the lawyers are not evidence.

2. Objections are not evidence. The parties have a right to object when they believe something is improper. You should not be influenced by the objection. If I sustained an objection to a question, you must ignore the question and must not try to guess what the answer might have been.

3. Testimony that I struck from the record, or told you to disregard, is not evidence and must not be considered.

4. Anything you saw or heard about this case outside the courtroom is not evidence.

Finally, if you were instructed that some evidence was received for a limited purpose only, you must follow that instruction.

INSTRUCTION NUMBER _____

There are two types of evidence from which a jury may properly find the truth as to the facts of a case: direct evidence and circumstantial evidence. Direct evidence is the evidence of the witness to a fact or facts of which they have knowledge by means of their senses. The other is circumstantial evidence—the proof of a chain of circumstances pointing to the existence or nonexistence of certain facts. The law makes no distinction between direct and circumstantial evidence. You should give all evidence the weight and value you believe it is entitled to receive.

INSTRUCTION NUMBER _____

The jurors are the sole judges of the weight and credibility of the testimony and the value to be given to each witness who has testified in this case. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider, therefore, whether a contradiction is an innocent misrecollection or lapse of memory or an intentional falsehood, and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NUMBER ____

In the previous instruction, I instructed you generally on the credibility of witnesses. I now give you this further instruction on how the credibility of a witness can be "impeached" and how you are to consider the testimony of certain witnesses.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; by showing the witness has a motive to be untruthful; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony.

You have heard evidence that Troy Perkins was once convicted of a crime. You may use that evidence only to help you decide whether to believe this witness and how much weight to give his testimony.

You have heard evidence that Troy Perkins had an arrangement with the government under which he was paid by the government for participation in an alleged controlled buy. His testimony was received in evidence and may be considered by you. You may give his testimony such weight as you think it deserves. Whether or not his testimony may have been influenced by such payment is for you to determine.

INSTRUCTION NUMBER _____

You have heard testimony from persons described as experts. Persons who, by knowledge, skill, training, education or experience, have become expert in some field may state their opinions on matters in that field and may also state the reasons for their opinion.

Expert testimony should be considered just like any other testimony. You may accept or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the soundness of the reasons given for the opinion, the acceptability of the methods used, and all the other evidence in the case.

INSTRUCTION NUMBER _____

You have heard audio recordings of conversations. These conversations were legally recorded, and you may consider the recordings just like any other evidence.

The recordings were accompanied by typed transcripts. The transcripts also undertook to identify the speakers engaged in the conversation. You were permitted to view the transcripts for the limited purpose of helping you follow the conversations as you listened to the audio recordings, and also to help you keep track of the speakers. The transcripts, however, are not evidence. The transcripts were not admitted into evidence, so they will not be available to you during your deliberations. An audio recording itself is the primary evidence of its own contents.

You are specifically instructed that whether a transcript correctly or incorrectly reflects the conversation is entirely for you to decide based upon what you have heard here about the preparation of the transcript and upon your own examination of the transcript in relation to what you heard on the recordings. If you decide that a transcript is in any respect incorrect or unreliable, you should disregard it to that extent.

Differences in meaning between what you heard in the recordings and read in the transcripts may be caused by such things as the inflection of the speaker's voice. You should, therefore, rely on what you heard rather than what you read when there is a difference.

INSTRUCTION NUMBER _____

The government and the defendant have stipulated—that is, they have agreed—that certain facts are as counsel have stated. You must therefore treat those facts as having been proved.

INSTRUCTION NUMBER _____

You have heard a certain category of evidence called "similar acts" evidence. Here, you have heard evidence of the defendant's prior conviction of drug crimes. You may not use this similar acts evidence to decide whether the defendant carried out the acts involved in the crimes charged in the Indictment. In order to consider similar acts evidence at all, you must first unanimously find beyond a reasonable doubt, based on the rest of the evidence introduced, that the defendant carried out the acts involved in the crimes charged in the Indictment. If you make that finding, then you may consider the similar acts evidence to decide intent, motive and knowledge. Similar acts evidence must be proven by a preponderance of the evidence; that is, you must find that the evidence is more likely true than not true. This is a lower standard than proof beyond a reasonable doubt. If you find that this evidence is proven by a preponderance of the evidence, you should give it the weight and value you believe it is entitled to receive. If you find that it is not proven by a preponderance of the evidence, then you shall disregard such evidence.

Remember, even if you find that the defendant may have committed a similar act in the past, this is not evidence that he committed such acts in this case. You may not convict a person simply because you believe he committed similar acts in the past. The defendant is on trial only for the crimes charged, and you may consider the evidence of "similar acts" only on the issue of the defendant's intent, motive and knowledge.

INSTRUCTION NUMBER ____

Exhibits have been admitted into evidence and are to be considered along with all the other evidence to assist you in reaching a verdict. You are not to tamper with the exhibits or their contents, and each exhibit should be returned into open court, along with your verdict, in the same condition as it was received by you.

INSTRUCTION NUMBER _____

A reasonable doubt is a doubt based upon reason and common sense, and not the mere possibility of innocence. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

INSTRUCTION NUMBER _____

You are instructed that a mixture or substance containing a detectable amount of cocaine base is commonly called "crack cocaine."

INSTRUCTION NUMBER ____

The Indictment in this case charges the defendant with five separate crimes.

Count 1 charges on or about April 6, 2004, in the Northern District of Iowa and elsewhere, the defendant knowingly and intentionally possessed with the intent to distribute and aided and abetted the distribution of approximately 3 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance.

Count 2 charges on or about April 30, 2004, in the Northern District of Iowa, the defendant, who had previously been convicted of one or more crimes punishable by imprisonment for a term exceeding one year, did knowingly possess, in and affecting commerce, one or more firearms.

Count 3 charges on or about April 30, 2004, in the Northern District of Iowa, the defendant, who is an unlawful user of marijuana, a controlled substance, did knowingly possess, in and affecting commerce, one or more firearms.

Count 4 charges on or about April 30, 2004, in the Northern District of Iowa, the defendant did knowingly possess a firearm which has had the manufacturer's serial number removed, obliterated, or altered and has been shipped or transported in interstate commerce.

Count 5 charges on or about September 2, 2004, in the Northern District of Iowa, the defendant did knowingly and intentionally possess with the intent to distribute and attempt to distribute approximately 5.5 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, within 1,000 feet of the real property constituting a school, specifically McKinley Middle School in Cedar Rapids, Iowa.

(CONTINUED)

INSTRUCTION NUMBER ____ (Cont'd)

The defendant has pleaded not guilty to each of the charges.

As I told you at the beginning of the trial, an indictment is simply an accusation. It is not evidence of anything. To the contrary, the defendant is presumed to be innocent. Thus the defendant, even though charged, begins the trial with no evidence against him. The presumption of innocence alone is sufficient to find the defendant not guilty and can be overcome only if the government proves, beyond a reasonable doubt, each essential element of the crimes charged.

Keep in mind that each count charges a separate crime. You must consider each count separately, and return a separate verdict for each count.

There is no burden upon the defendant to prove that he is innocent. Accordingly, the fact that a defendant did not testify must not be considered by you in any way, or even discussed, in arriving at your verdict.

INSTRUCTION NUMBER ____

Count 1 of the Indictment charges on or about April 6, 2004, in the Northern District of Iowa and elsewhere, the defendant knowingly and intentionally possessed with the intent to distribute, and aided and abetted the distribution of approximately 3 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance. The defendant may be found guilty of Count 1 under one or both of the following two alternatives: (1) committing the offense of possessing a mixture or substance containing a detectable amount of cocaine base with the intent to distribute it; or (2) committing the offense of aiding and abetting the distribution of a mixture or substance containing a detectable amount of cocaine base.

First Alternative: Possession with the Intent to Distribute a Mixture or Substance Containing a Detectable Amount of Cocaine Base

The crime of possession with the intent to distribute a mixture or substance containing a detectable amount of cocaine base as charged in Count 1 of the Indictment, has three essential elements, which are:

One, on or about April 6, 2004, the defendant was in possession of a mixture or substance containing a detectable amount of cocaine base;

Two, the defendant knew he was in possession of the mixture or substance containing a detectable amount of cocaine base; and

Three, the defendant intended to distribute some or all of the mixture or substance containing a detectable amount of cocaine base to another person.

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 1 under this "possession with the intent to distribute a mixture or substance containing a detectable

amount of cocaine base " alternative; otherwise you must find the defendant not guilty under this alternative.

Second Alternative: Aiding and Abetting Distribution of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

A person may be found guilty of distribution of a mixture or substance containing a detectable amount of cocaine base even if he personally did not do every act constituting the offense charged, if he aided and abetted the commission of distributing a mixture or substance containing a detectable amount of cocaine base.

In order to have aided and abetted the commission of distributing a mixture or substance containing a detectable amount of cocaine base, a person must:

One, have known the crime of distribution of a mixture or substance containing a detectable amount of cocaine base was being committed or going to be committed;

Two, have knowingly acted in some way for the purpose of causing, encouraging, or aiding the crime of distribution of a mixture or substance containing a detectable amount of cocaine base; and

Three, have intended that the crime of distribution of a mixture or substance containing a detectable amount of cocaine base be committed.

For you to find the defendant guilty of Count 1 under this "aiding and abetting distribution of a mixture or substance containing a detectable amount of cocaine base" alternative, you must unanimously find the government has proved beyond a reasonable doubt that all the essential elements of distributing cocaine base were committed by some person or persons and that the defendant aided and abetted the commission of that crime. Otherwise you must find the defendant not guilty under this alternative.

INSTRUCTION NUMBER _____ (Cont'd)

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has become an aider and abettor. A person who has no knowledge that a crime is being committed or about to be committed, but who happens to act in a way which advances some offense, does not thereby become an aider and abettor.

INSTRUCTION NUMBER ____

The crime of possessing a firearm after having been convicted of a crime punishable by imprisonment for a term exceeding one year, that is a felony offense, as charged in Count 2 of the Indictment, has three essential elements, which are:

One, the defendant was convicted of a felony offense, that is a crime punishable by imprisonment for a term exceeding one year;

Two, the defendant thereafter knowingly possessed one or more firearms, that is

(1) a loaded Ruger .357 magnum stainless revolver, Blackhawk model, serial number 35-46921;

(2) a loaded Davis Industries model P-380, .380 caliber, serial number #AP467702; and/or

(3) a loaded Lorcin model L9mm., 9 mm, serial number obliterated

Three, the firearm or firearms were transported across a state line at some time during or before the defendant's possession of them.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime of being a felon in possession of a firearm in and affecting commerce; otherwise you must find the defendant not guilty of the crime charged under Count 2.

INSTRUCTION NUMBER ____

The crime of being an unlawful user of controlled substances in possession of one or more firearms in and affecting interstate commerce, as charged in Count 3 of the Indictment, has three essential elements, which are:

One, on or about April 30, 2004, the defendant was an unlawful user of controlled substances, that is marijuana;

Two, the defendant knowingly possessed one or more firearms, that is

(1) a loaded Ruger .357 magnum stainless revolver, Blackhawk model, serial number 35-46921;

(2) a loaded Davis Industries model P-380, .380 caliber, serial number #AP467702; and/or

(3) a loaded Lorcin model L9mm., 9 mm, serial number obliterated

while he was an unlawful user of a controlled substance; and

Three, the firearm or firearms were transported across a state line at some time during or before the defendant's possession of them.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime of being an unlawful user of controlled substances in possession of one or more firearms in and affecting interstate commerce; otherwise you must find the defendant not guilty of the crime charged under Count 3.

INSTRUCTION NUMBER _____

The crime of being in possession of a firearm with an obliterated serial number, as charged in Count 4 of the Indictment, has four essential elements, which are:

One, on or about April 30, 2004, the defendant knowingly possessed a firearm;

Two, that firearm's importer's or manufacturer's serial number had been removed, obliterated, or altered;

Three, the defendant knew the importer's or manufacturer's serial number had been removed, obliterated, or altered; and

Four, the firearm had previously been shipped or transported in interstate commerce.

If all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of the crime of being in possession of a firearm with an obliterated serial number; otherwise you must find the defendant not guilty of the crime charged under Count 4.

INSTRUCTION NUMBER ____

Count 5 charges on or about September 2, 2004, in the Northern District of Iowa, the defendant did knowingly and intentionally possess with the intent to distribute and attempt to distribute approximately 5.5 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, within 1,000 feet of the real property constituting a school, specifically McKinley Middle School in Cedar Rapids, Iowa. The defendant may be found guilty of Count 5 under one or both of the following two alternatives: (1) committing the offense of possessing with the intent to distribute 5 grams or more of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school; or (2) committing the offense of attempting to distribute 5 grams or more of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school.

First Alternative: Possession with the Intent to Distribute 5 Grams or More of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

The crime of possession with the intent to distribute 5 grams or more of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school, as charged in Count 5 of the Indictment, has four essential elements, which are:

One, on or about September 2, 2004, the defendant possessed 5 grams or more of a mixture or substance containing a detectable amount of cocaine base;

Two, the defendant knew he was in possession of the mixture or substance containing a detectable amount of cocaine base;

Three, the defendant intended to distribute some or all of the mixture or substance containing a detectable amount of cocaine base to another person; and

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Four, the defendant possessed the mixture or substance containing a detectable amount of cocaine base with the intent to distribute it within 1,000 feet of the real property constituting a school, that is, McKinley Middle School.

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 5 under this "possession of 5 grams or more with the intent to distribute a mixture or substance containing a detectable amount of cocaine base " alternative; otherwise you must find the defendant not guilty under this alternative.

Second Alternative: Attempting to Distribute 5 Grams or More of of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

The crime of attempting to distribute 5 grams or more of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school, as charged in Count 5 of the Indictment, has five essential elements, which are:

One, on or about September 2, 2004, the defendant intended to distribute a mixture or substance containing a detectable amount of cocaine base to another person;

Two, the defendant knew the material he then intended to distribute was a controlled substance, specifically a mixture or substance containing a detectable amount of cocaine base;

Three, the defendant voluntarily and intentionally carried out some act which was a substantial step toward distribution of a mixture or substance containing a detectable amount of cocaine base to another person;

Four, the defendant attempted to distribute the mixture or substance containing a detectable amount of cocaine base to another person within 1,000 feet of the real property constituting a school, that is, McKinley Middle School; and

INSTRUCTION NUMBER _____ (Cont'd)

Five, the amount involved in the offense was 5 grams or more of a mixture of substance containing a detectable amount of cocaine base.

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 5 under this "attempting to distribute 5 grams or more of a mixture or substance containing a detectable amount of cocaine base" alternative; otherwise you must find the defendant not guilty under this alternative.

INSTRUCTION NUMBER _____

If your verdict under Instruction Number ___ is not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Instruction Number ___, follow the directions on the Verdict Form and go on to consider whether the defendant is guilty of the lesser included offenses of Count 5 under this instruction.

The defendant also may be found guilty of Count 5 under one or both of the following two lesser-included alternatives: (1) committing the offense of possessing with the intent to distribute less than 5 grams of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school; or (2) committing the offense of attempting to distribute less than 5 grams of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school.

First Lesser-Included Alternative: Possession with the Intent to Distribute Less Than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

The crime of possession with the intent to distribute less than 5 grams of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school, a lesser included offense of Count 5, has four essential elements, which are:

One, on or about September 2, 2004, the defendant possessed less than 5 grams of a mixture or substance containing a detectable amount of cocaine base;

Two, the defendant knew he was in possession of the mixture or substance containing a detectable amount of cocaine base;

Three, the defendant intended to distribute some or all of a mixture or substance containing a detectable amount of cocaine base to another person; and

Four, the defendant possessed a mixture or substance containing a detectable amount of cocaine base with the intent to distribute it within 1,000 feet of the real property constituting a school, that is, McKinley Middle School.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 5 under this "possession with the intent to distribute less than 5 grams of a mixture or substance containing a detectable amount of cocaine base " alternative; otherwise you must find the defendant not guilty under this alternative.

Second Lesser-Included Alternative: Attempting to Distribute Less Than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

The crime of attempting to distribute less than 5 grams of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school, a lesser included offense of Count 5, has five essential elements, which are:

One, on or about September 2, 2004, the defendant intended to distribute a mixture or substance containing a detectable amount of cocaine base to another person;

Two, the defendant knew the material he then intended to distribute was a controlled substance, specifically a mixture or substance containing a detectable amount of cocaine base;

Three, the defendant voluntarily and intentionally carried out some act which was a substantial step toward distribution of the mixture or substance containing a detectable amount of cocaine base to another person;

Four, the defendant attempted to distribute a mixture or substance containing a detectable amount of cocaine base to another person within 1,000 feet of the real property constituting a school, that is, McKinley Middle School; and

Five, the amount involved in the offense was less than 5 grams of a mixture of substance containing a detectable amount of cocaine base.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 5 under this "attempting to distribute less than 5 grams of a mixture or substance containing a detectable amount of cocaine base" alternative; otherwise you must find the defendant not guilty under this alternative.

INSTRUCTION NUMBER _____

If your verdicts under Instructions Number ___ and ___ are not guilty, or if, after all reasonable efforts, you are unable to reach a verdict on Instructions Number ___ and ___, follow the directions on the Verdict Form and go on to consider whether the defendant is guilty of the lesser included offense of Count 5 under this instruction.

The defendant also may be found guilty of Count 5 under one or both of the following two lesser-included alternatives: (1) committing the offense of knowingly possessing 5 grams or more of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school; or (2) committing the offense of knowingly possessing less than 5 grams of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school.

Third Lesser-Included Alternative: Knowingly Possessing 5 Grams or More of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

The crime of knowingly possessing 5 grams or more of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school, a lesser included offense of Count 5, has three essential elements, which are:

One, on or about September 2, 2004, the defendant possessed 5 grams or more of a mixture or substance containing a detectable amount of cocaine base;

Two, the defendant knew he was in possession of the mixture or substance containing a detectable amount of cocaine base; and

Three, the defendant possessed the mixture or substance containing a detectable amount of cocaine base within 1,000 feet of the real property constituting a school, that is, McKinley Middle School.

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 5 under this

(CONTINUED)

INSTRUCTION NUMBER ____

"knowingly possessing 5 grams or more of a mixture or substance containing a detectable amount of cocaine base " alternative; otherwise you must find the defendant not guilty under this alternative.

Fourth Lesser-Included Alternative: Knowingly Possessing Less Than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

The crime of knowingly possessing less than 5 grams of a mixture or substance containing a detectable amount of cocaine base within 1,000 feet of a school, a lesser included offense of Count 5, has three essential elements, which are:

One, on or about September 2, 2004, the defendant possessed less than 5 grams of a mixture or substance containing a detectable amount of cocaine base;

Two, the defendant knew he was in possession of the mixture or substance containing a detectable amount of cocaine base; and

Three, the defendant possessed the mixture or substance containing a detectable amount of cocaine base within 1,000 feet of the real property constituting a school, that is, McKinley Middle School.

If you unanimously find all of these essential elements have been proved beyond a reasonable doubt, then you must find the defendant guilty of Count 5 under this "knowingly possessing less than 5 grams of a mixture or substance containing a detectable amount of cocaine base " alternative; otherwise you must find the defendant not guilty under this alternative.

INSTRUCTION NUMBER ____

In considering whether the government has met its burden of proving the crime of aiding and abetting the distribution of a mixture or substance containing a detectable amount of cocaine base, as charged in Count 1 of the Indictment, you are further instructed as follows:

The crime of distributing a mixture or substance containing a detectable amount of cocaine base has two essential elements, which are:

One, an individual intentionally transferred a mixture or substance containing a detectable amount of cocaine base; and

Two, at the time of the transfer, the individual knew that it was a mixture or substance containing a detectable amount of cocaine base.

INSTRUCTION NUMBER ____

You will note that the Indictment charges that these offenses occurred in the Northern District of Iowa.

The government must prove by the preponderance of the evidence that the offenses charged were begun, continued, or completed in the Northern District of Iowa.

To prove something by the preponderance of the evidence is to prove that it is more likely true than not true. This is a lesser standard than proof beyond a reasonable doubt. The requirement of proof beyond a reasonable doubt applies to all other issues in the case.

You are instructed that Iowa City, Iowa, and Coralville, Iowa, are located in the Southern District of Iowa. Cedar Rapids, Iowa, and Marion, Iowa, are in the Northern District of Iowa.

INSTRUCTION NUMBER ____

In considering whether the government has met its burden of proving the crimes charged in Counts 1 and 5 of the Indictment, you are further instructed as follows:

The term "distribute" means to deliver a controlled substance to the possession of another person. The term "deliver" means the actual or attempted transfer of a controlled substance to the possession of another person. No consideration for the delivery need exist, and it is not necessary that money or anything of value change hands. The law is directed at the act of "distribution" of a controlled substance and does not concern itself with any need for a "sale" to occur.

In determining whether the defendant is guilty of possessing with the intent to distribute, aiding and abetting the distribution, and attempting to distribute as charged in Counts 1 and 5, the government is not required to prove that the amount or quantity of the controlled substance was as charged in the Indictment. The government need only prove beyond a reasonable doubt that there was a measurable amount of the controlled substance.

However, if you find the defendant guilty of Count 5, you will need to determine whether the quantity of the mixture or substance containing a detectable amount of cocaine base involved in the offense was 5 grams or more, or less than 5 grams. The burden of proof is on the government to establish the quantity beyond a reasonable doubt. Your determination of the quantity must be unanimous.

For your information, one gram equals 1,000 milligrams, one ounce equals 28.35 grams, one pound equals 453.6 grams and one kilogram equals 1,000 grams.

INSTRUCTION NUMBER _____

In considering whether the government has met its burden of proving the crime charged in Count 5 of the Indictment, you must decide whether the location at which the possession or the attempted distribution of a controlled substance took place was within 1,000 feet of the real property constituting a school. The 1,000 foot zone can be measured in a straight line from the school irrespective of actual pedestrian travel routes. The government does not have to prove that the defendant agreed, knew, or intended that the offense would take place within 1,000 feet of the school.

INSTRUCTION NUMBER ____

In considering whether the government has met its burden of proving the crime charged in Count 2 of the Indictment, you are further instructed as follows:

It is not necessary for the government to prove the defendant knew that the firearms charged in the Indictment have traveled in interstate commerce, he himself personally transported the firearms in interstate commerce, or that he intended to violate a particular statute. Likewise, it is not necessary for the government to prove that the defendant knew that it was illegal to have the firearms in his possession within the meaning of the law. Nor is it necessary for the government to prove who owned the firearms at any time. The statute involved speaks in terms of possession, not ownership.

INSTRUCTION NUMBER ____

In considering whether the government has met its burden of proving the crime charged in Count 3 of the Indictment, you are further instructed as follows:

The term "user of a controlled substance" means a person who uses a controlled substance in a manner other than as prescribed by a licensed physician.

The defendant must have been actively engaged in the use of a controlled substance during the period of time he possessed the firearm, but the law does not require that he used the controlled substance at the precise time he possessed the firearm. An inference that a person was a user of a controlled substance may be drawn from evidence of a pattern of use or possession of a controlled substance that reasonably covers the time the firearm was possessed.

INSTRUCTION NUMBER _____

The term "firearm" as used in Counts 2, 3, and 4 of the Indictment means any weapon (including a starter gun) which will or is designed to or may be readily converted to expel a projectile by the action of an explosive.

INSTRUCTION NUMBER _____

You are instructed as a matter of law that a mixture or substance containing a detectable amount of cocaine base is Schedule II controlled substance and marijuana is a Schedule I controlled substance. You must ascertain whether or not the substances in question in Counts 1 and 5 were mixtures or substances containing a detectable amount of cocaine base. You must ascertain whether or not the defendant was an unlawful user of marijuana in Count 3. In so doing, you may consider all the evidence in the case which may aid in the determination of these issues.

INSTRUCTION NUMBER ____

Each Count of the Indictment involves the issue of "possession." Counts 1 and 5 involve possession of a controlled substance. Counts 2, 3 and 4 involve possession of one or more firearms.

The law recognizes several kinds of "possession." A person may have actual possession or constructive possession. A person may have sole or joint possession.

A person who knowingly has direct physical control over a thing, at a given time, is then in "actual possession" of it.

A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in "constructive possession" of it.

If one person alone has actual or constructive possession of a thing, possession is "sole." If two or more persons share actual or constructive possession of a thing, possession is "joint."

Whenever the word "possession" has been used in these instructions it includes "actual" as well as "constructive" possession and also "sole" as well as "joint" possession.

INSTRUCTION NUMBER ____

You will note the Indictment charges that the offenses were committed "on or about" certain dates. The government need not prove with certainty the exact date or the exact time period of an offense charged. It is sufficient if the evidence established that an offense occurred within a reasonable time of the date or period of time alleged by the Indictment.

INSTRUCTION NUMBER_____

An act is done "knowingly" if the defendant realized what he was doing and did not act through ignorance, mistake or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider the evidence of the defendant's acts and words, along with all other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NUMBER ____

Intent may be proven by circumstantial evidence. It rarely can be established by other means. While witnesses may see or hear and thus be able to give direct evidence of what a person does or fails to do, there can be no eyewitness account of the state of mind with which the acts were done or omitted. But what a defendant does or fails to do may indicate intent or lack of intent to commit an offense.

You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done, but you are not required to do so. As I have said, it is entirely up to you to decide what facts to find from the evidence.

INSTRUCTION NUMBER ____

Throughout the trial, you have been permitted to take notes. Your notes should be used only as memory aids, and you should not give your notes precedence over your independent recollection of the evidence.

In any conflict between your notes, a fellow juror's notes, and your memory, your memory must prevail. Remember that notes sometimes contain the mental impressions of the note taker and can be used only to help you recollect what the testimony was. At the conclusion of your deliberations, your notes should be left in the jury room for destruction.

INSTRUCTION NUMBER ____

In conducting your deliberations and returning your verdict, there are certain rules you must follow. I shall list those rules for you now.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach an agreement if you can do so without violence to individual judgment, because a verdict—whether guilty or not guilty—must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict.

Third, if the defendant is found guilty, the sentence to be imposed is my responsibility. You may not consider punishment in any way in deciding whether the government has proved its case beyond a reasonable doubt.

(CONTINUED)

INSTRUCTION NUMBER _____ (Cont'd)

Fourth, if you need to communicate with me during your deliberations, you may send a note to me through the marshal or court security officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should not tell anyone—including me—how your votes stand numerically.

Finally, your verdict must be based solely on the evidence and on the law which I have given to you in my instructions. The verdict, whether guilty or not guilty, must be unanimous. Nothing I have said or done is intended to suggest what your verdict should be —that is entirely for you to decide.

INSTRUCTION NUMBER ____

Attached to these instructions you will find the Verdict Forms. The Verdict Forms are simply the written notice of the decision that you reach in this case. The answer to each Verdict Form must be the unanimous decision of the jury.

You will take these Verdict Forms to the jury room, and when you have completed your deliberations and each of you has agreed on an answer to each Verdict Form, your foreperson will fill out each Form, sign and date it, and advise the marshal or court security officer that you are ready to return to the courtroom.

Finally, members of the jury, take this case and give it your most careful consideration, and then without fear or favor, prejudice or bias of any kind, return such verdict as accords with the evidence and these instructions.

_____ _____

DATE **LINDA R. READE**
JUDGE, U. S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 1**

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
knowingly and intentionally possessing with the intent to distribute, or aiding and abetting the distribution of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, in the Northern District of Iowa and elsewhere on or about April 6, 2004, as charged in Count 1 of the Indictment.

_____
FOREPERSON

_____
DATE

(CONTINUED)

If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space, and sign and date this verdict form. You must then consider the Interrogatory — Count 1 below.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write "not guilty" in the above blank space, and sign and date this verdict form. You must then consider whether the defendant is guilty of Count 2 on the following verdict form.

INTERROGATORY — COUNT 1

If you unanimously found the defendant guilty of Count 1, place a check mark (√) before the alternative or alternatives you unanimously found, beyond a reasonable doubt, describe(s) the defendant's criminal conduct under Count 1:

_____ Possession with the intent to distribute a mixture or substance containing a detectable amount of cocaine base

_____ Aiding and abetting the distribution of a mixture or substance containing a detectable amount of cocaine base

_____
FOREPERSON

_____
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 2**

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
possessing a firearm in the Northern District of Iowa on or about April 30, 2004, after previously having been convicted of a felony offense, as charged in Count 2 of the Indictment.

_____
FOREPERSON

_____
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 3**

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
being an unlawful user of controlled substances in knowing possession, in and affecting commerce, of one or more firearms in the Northern District of Iowa on or about April 30, 2004, as charged in Count 3 of the Indictment.

_____
FOREPERSON

_____
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 4**

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
knowingly possessing a firearm, in the Northern District of Iowa on or about April 30, 2004, which has had the manufacturer's serial number removed, obliterated, or altered and has been shipped or transported in interstate commerce, as charged in Count 4 of the Indictment.

_____
FOREPERSON

_____
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 5**

Part A. Possession with the Intent to Distribute or Attempting to Distribute 5 Grams or More of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
knowingly and intentionally possessing with the intent to distribute or attempting to distribute 5 grams or more of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, within 1,000 feet of a school in the Northern District of Iowa on or about September 2, 2004, as charged in Count 5 of the Indictment.

_____
FOREPERSON

_____
DATE

(CONTINUED)

If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space, and sign and date this verdict form. Do not answer any further verdict forms regarding Count 5.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write "not guilty" in the above blank space, and sign and date this verdict form. You must then consider whether the defendant is guilty of the lesser included offense of Count 5, Part B. Possession with the Intent to Distribute or Attempting to Distribute Less than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base, on the following verdict form.

If you are unable to reach a unanimous decision on the above charge, leave the space blank and consider whether the defendant is guilty of the lesser included offense of Count 5, Part B. Possession with the Intent to Distribute or Attempting to Distribute Less than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base, on the following verdict form.

(CONTINUED)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 5**

Part B. Possession with the Intent to Distribute or Attempting to Distribute Less Than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
knowingly and intentionally possessing with the intent to distribute or attempting to distribute less than 5 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, within 1,000 feet of a school in the Northern District of Iowa on or about September 2, 2004, a lesser included offense of Count 5.

_____
FOREPERSON

_____
DATE

(CONTINUED)

If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space, and sign and date this verdict form. Do not answer any further verdict forms regarding Count 5.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write "not guilty" in the above blank space, and sign and date this verdict form. You must then consider whether the defendant is guilty of the lesser included offense of Count 5, Part C. Knowingly Possessing 5 Grams or More of a Mixture or Substance Containing a Detectable Amount of Cocaine Base, on the following verdict form.

If you are unable to reach a unanimous decision on the above charge, leave the space blank and consider whether the defendant is guilty of the lesser included offense of Count 5, Part C. Knowingly Possessing 5 Grams or More of a Mixture or Substance Containing a Detectable Amount of Cocaine Base, on the following verdict form.

(CONTINUED)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 5**

Part C. Knowingly Possessing 5 Grams or More of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
knowingly possessing 5 grams or more of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, within 1,000 feet of a school in the Northern District of Iowa on or about September 2, 2004, a lesser included offense of Count 5.

_____
FOREPERSON

_____
DATE

(CONTINUED)

If you unanimously find the defendant guilty of the above crime, have your foreperson write "guilty" in the above blank space, and sign and date this verdict form. Do not answer any further verdict forms regarding Count 5.

If you unanimously find the defendant not guilty of the above charge, have your foreperson write "not guilty" in the above blank space, and sign and date this verdict form. You must then consider whether the defendant is guilty of the lesser included offense of Count 5, Part D. Knowingly Possessing Less Than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base, on the following verdict form.

If you are unable to reach a unanimous decision on the above charge, leave the space blank and consider whether the defendant is guilty of the lesser included offense of Count 5, Part D. Knowingly Possessing Less Than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base, on the following verdict form.

(CONTINUED)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. LEON JOHNSON, Defendant.	No. CR 04-0108 LRR **VERDICT FORM - COUNT 5**

Part D. Knowingly Possessing Less Than 5 Grams of a Mixture or Substance Containing a Detectable Amount of Cocaine Base

We, the Jury, find the defendant, Leon Johnson, _____ of the crime of
Not Guilty/Guilty
knowingly possessing less than 5 grams of a mixture or substance containing a detectable amount of cocaine base, a Schedule II controlled substance, within 1,000 feet of a school in the Northern District of Iowa on or about September 2, 2004, a lesser included offense of Count 5.

_____
FOREPERSON

_____
DATE